

# EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

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CHRISTOPHER HOWE,                   :  
Individually, and on               :  
Behalf of all others               :  
Similarly situated,               :  
                    Plaintiff               :  
                    -vs-                        : CASE NO. 1:19-cv-01374  
SPEEDWAY LLC AND                   :  
MARATHON PETROLEUM               :  
COMPANY,                               :  
                    Defendants               :

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Deposition of MATT GREEN, a witness  
herein, taken by the Plaintiff as upon  
cross-examination and pursuant to the Ohio Rules of  
Civil Procedure as to the time and place and  
stipulations hereinafter set forth, at the offices  
of Britton & Associates, 201 Riverside Drive, Suite  
2B, Dayton, Ohio at 11:39 a.m., on January 17,  
2020, before Jamie S. Hurley, Court Reporter and  
Notary Public within and for the State of Ohio.

\* \* \* \* \*

1 WHEREUPON:

2 MATT GREEN,  
3 of lawful age, a witness herein, being first duly  
4 sworn as hereinafter certified, testified as  
5 follows:

6 CROSS-EXAMINATION

7 BY MR. STEPHAN:

8 Q. Good morning, Matt. Can you please  
9 state and spell your name for the record?

10 A. Yeah. It's Matt Green. Did you say  
11 spell, too, or --

12 Q. If you could spell your last name,  
13 please.

14 A. Sure. It's, G-R-E-E-N.

15 Q. Is it okay if I call you Matt today?

16 A. That's fine.

17 Q. Okay. Have you ever been deposed  
18 before?

19 A. I have.

20 Q. How many times?

21 A. Two or three. I want to say three.

22 Q. Okay. When was the last time you were  
23 deposed?

24 A. Oh, it's been a few years, probably  
25 five or six.

1           A. Yeah. That would be the various  
2 systems rights so that would be your SAP  
3 environments. We have a recruiting onboarding  
4 system. We have a time and attendance system.  
5 What else? It seems like I'm missing another  
6 system but those are the main ones.

7           Q. Okay. Currently what time and  
8 attendance system does Speedway use?

9           A. Currently we are using Infor time and  
10 attendance.

11          Q. Okay. Is Infor a separate vendor?

12          A. It is.

13          Q. How long has Speedway used Infor?

14          A. That went in, I think we rolled it out  
15 in 2018.

16          Q. Do you remember when in 2018?

17          A. It would have started at the, maybe the  
18 beginning part of the year in, because of our size  
19 it would have, I believe it took the whole year.

20          Q. Okay. And what was the time and  
21 attendance system used by Speedway before Infor?

22          A. I knew it as TimeLink but it was  
23 purchased by Kronos at some point.

24          Q. Okay. TimeLink, was that a separate  
25 company?

1 A. Yes.

2 Q. And then it's your understanding that  
3 TimeLink was then purchased or bought out at some  
4 point by Kronos; is that correct?

5 A. That's correct.

6 Q. Do you know when Speedway first started  
7 using TimeLink?

8 A. It goes back to, I want to say 2005,  
9 2006, somewhere in there.

10 Q. Okay. And do you know approximately  
11 when Kronos purchased TimeLink?

12 A. No, I don't know specifically. I would  
13 say it was much later but, or more recent I guess,  
14 but I don't know specifically.

15 Q. Do you know the year?

16 A. No. I've even trying to think of the  
17 year here. No, I'd be guessing if I said  
18 something. I don't know.

19 Q. Do you know if it's been within the  
20 past five years?

21 A. Maybe, sounds right.

22 Q. If you wanted to find out, could you?

23 A. I'd probably have to do some inquiry.

24 Q. And how would you do that?

25 A. We still, well, no, we don't. They

1 have to get some additional ones, I believe, from  
2 Kronos.

3 Q. Okay. So I just want to kind of  
4 summarize here to make sure we're on the same page  
5 here. So going back to 2005 there was  
6 approximately 1,500 time clocks provided by  
7 TimeLink, correct?

8 A. Correct.

9 Q. And those were purchased by Speedway?

10 A. Correct.

11 Q. Between 2005 or 2006 and 2018 Speedway  
12 purchased additional clocks from Kronos?

13 A. Yes. But it would have been, it's not  
14 going to be as early as 2005, 2006. It's going to  
15 be towards the end of life so somewhere in the  
16 couple years before Infor.

17 Q. So around 2015 or so?

18 A. Yeah. '13, '14, '15, somewhere in  
19 there.

20 Q. Okay. And how many clocks did Speedway  
21 purchase from Kronos at that time?

22 A. You're talking maybe 100 or so.

23 Q. Does 150 sound right?

24 A. Yeah. That's 100 or so, yeah.

25 Q. And were those all purchased at the

1     them.

2             Q.   Do you know how those clocks  
3     functioned?

4             A.   A little bit because of the discussion  
5     when we initially bought them.

6             Q.   Okay.  Were those clocks sent out to  
7     stores, Speedway stores in Illinois also?

8             A.   Yes.  Illinois would have been one of  
9     our states at the time, yes.

10            Q.   Okay.  And approximately how many  
11    stores would there have been in Illinois back in  
12    2005 or so?

13            A.   That's a great question.  100 would be  
14    my guess.

15            Q.   Okay.  And those TimeLink time clocks  
16    that were sent to Illinois stores, were they used  
17    by store employees?

18            A.   Yes.

19            Q.   Okay.  Did all of the hourly paid store  
20    employees have to use those types of clocks to  
21    record their time?

22            A.   All the employees at the store level  
23    would clock in and out with the clocks.

24            Q.   Okay.  So customer service would have  
25    to clock in and out?

1           A. No. On all the store level employees  
2 so that would be our general managers, the  
3 assistants and the hourly CSRs.

4           Q. Okay. What does CSR stand for?

5           A. Customer service representative.

6           Q. Okay. That's what I was asking.

7           A. Okay. Okay.

8           Q. Okay. So all of the store employees in  
9 Illinois would have to record their time using  
10 these TimeLink time clocks between 2005 and 2015 or  
11 so; does that sound about right?

12          A. Yep. Correct.

13          Q. Okay. And do you know how many  
14 employees in Illinois use those time clocks between  
15 that time?

16          A. No. That, I have no idea.

17          Q. Okay. We can find that out by looking  
18 at the HRIS, correct?

19          A. Yes. We could probably run a report  
20 and determine how many employees were at a store.

21          Q. Okay. And we could find out all of the  
22 employees that were in Illinois, for example,  
23 between that time?

24          A. Yes.

25          Q. Okay. So sticking with this TimeLink



1 clock, before employees, store employees could use  
2 it, would they have to be enrolled?

3 A. They did have to be enrolled, correct.

4 Q. And are you familiar with that process?

5 A. I'm vaguely trying to recall it, yes.

6 I am familiar with it.

7 Q. Okay. Can you tell us how they would  
8 be enrolled?

9 A. So from what I recall the manager had  
10 to go up to the clock, scan their finger. I  
11 believe there was a code they put in. I don't know  
12 that that code was and then or maybe it was a  
13 button that said enroll employee. I can't recall.  
14 And then the employee had to put their finger up  
15 there and scan it three times.

16 Q. Okay. And when you say scan their  
17 finger, what part of their finger would they have  
18 to scan?

19 A. We told them their index finger but we  
20 had, we had employees, like, that were formally  
21 cooks and stuff where they couldn't read it, so  
22 they could use the side of their finger, the side  
23 of their knuckle, I mean, anything like that would  
24 actually work.

25 Q. So when you say they could use their

1 knuckle they could use the top of their finger?

2 A. The back side of their finger.

3 Q. Right.

4 A. Yeah.

5 Q. Okay. So it's your testimony that to  
6 enroll employees in the TimeLink time clocks they  
7 are supposed to their index finger, correct?

8 A. They would, yep. That was the  
9 instructions, I believe, yep.

10 Q. But if there was a problem with their  
11 index finger they could then use other parts of  
12 their finger like their knuckle?

13 A. Their knuckle, the side of their  
14 finger, yes, correct.

15 Q. Are you aware of any documents that  
16 document that alternative way of enrolling by using  
17 a knuckle or a side of a finger?

18 A. No. We wouldn't have communicated  
19 that, but we had, like I said, we had a couple  
20 employees that had trouble enrolling so we engaged,  
21 I engaged TimeLink early on and that was their  
22 solution and it worked.

23 Q. Okay. Who did you engage in TimeLink  
24 on that topic?

25 A. That would have been Bruce Brooks who

1 would have been the time link sales rep that I  
2 worked with back in the day.

3 Q. Okay. And what did Bruce tell you?

4 A. Bruce told me, well, at first he said  
5 let me check into it, asked somebody, and then he  
6 got back to me and said, have them try the side of  
7 their finger or their knuckle so we did.

8 Q. But the primary way for Speedway store  
9 employees in Illinois to enroll in the TimeLink  
10 time clock would be to use the finger pad of their  
11 index finger; is that correct?

12 A. Yes. For consistency purposes, yes,  
13 sure.

14 Q. Did you ever see that referred to as a  
15 fingerprint?

16 A. More of a finger scan but yeah.

17 Q. Okay. I'm just asking you did you ever  
18 see that referred in writing anywhere as a  
19 fingerprint?

20 A. I'm trying to recall, no. I don't  
21 believe so.

22 Q. Okay. Okay. And then once they  
23 scanned their finger three times were they enrolled  
24 in the clock?

25 A. They were enrolled at that, well, I'm

1     sorry, there was a step in there somewhere that the  
2     manager had to put their employee number in, too.  
3     So I think they did that and then they scanned the  
4     finger three times.

5             Q.   Okay.  Was there also a step to confirm  
6     that the image had been properly recorded?

7             A.   I think that happened after the third  
8     scan.  It might have turned green or something.  
9     It's been a while but there had to have been  
10    something that, that maybe it beeped.  There was  
11    something to let them know that they were good.

12            Q.   Okay.  Back during this time when the  
13    TimeLink clocks were used between 2005 and 2015 or  
14    so, well, first thing, did you ever see them  
15    referred to as biometric clocks or biometric time  
16    clocks?

17            A.   Yes, biometric, yep.

18            Q.   Okay.  And back during this time did  
19    Speedway obtain written consents from its employees  
20    in Illinois before they were enrolled in those  
21    TimeLink time clocks?

22            A.   Written consent, no.

23            Q.   Back during that time between 2005 and  
24    2015 did Speedway have any sort of publicly  
25    available policy regarding the use of those

1 employees fingerprints on the time clock?

2 A. No.

3 Q. The TimeLink time clocks, where in the  
4 store would they be located?

5 A. I believe it varied depending on space  
6 and having to connect into the store network to  
7 make it all work but typically they were somewhere  
8 close to probably the front registers as you go  
9 into the back room so somewhere right in there.

10 Q. Okay.

11 A. But it did vary.

12 Q. And you mentioned that they were  
13 networks, correct?

14 A. Yeah. Somehow the clocks had to  
15 communicate to the software.

16 Q. Okay. And where was the software  
17 located?

18 A. The software was somewhere on our  
19 network because the manager had to get to it on  
20 their back office computer.

21 Q. Okay. You're talking about the  
22 Speedway network?

23 A. The Speedway store network, correct.

24 Q. Okay. And that would be on servers in  
25 Enon, Ohio; is that correct?

1           A. I don't know. I'm not IT so possibly.

2           Q. Okay. Are you aware of employees in  
3 Illinois ever working at more than one store  
4 location?

5           A. Yeah. We consider those borrowed  
6 employees if they go work in a different store.

7           Q. Okay. Okay. So, for example, a store  
8 employee may work at a store in one town and then a  
9 store in a neighboring town may be additional  
10 workers and that employee would then switch over to  
11 that store; is that correct?

12          A. That's correct that they would have  
13 worked at another store. We wouldn't have  
14 transferred them to another store or anything like  
15 that.

16          Q. Okay. When employees work at more than  
17 one store --

18          A. Yep.

19          Q. -- would they have to reenroll in each  
20 TimeLink time clock before they could use it?

21          A. I believe they did because that way we  
22 knew which store to charge the labor to.

23          Q. And would they have to reenroll by  
24 providing their fingerprint again?

25          A. They would have to scan their finger

1 three times again, yes.

2 Q. Okay. And do you know if, do you know  
3 if those TimeLink devices had any sort of hard  
4 drive or memory capabilities?

5 A. The time clock?

6 Q. That's right. The device itself.

7 A. Yeah. I would, I don't know.

8 Q. Okay. If you wanted to find out, who  
9 would you ask?

10 A. I'd like to go back to TimeLink but  
11 they don't exist anymore.

12 Q. Is there anyone at Speedway you can  
13 ask?

14 A. I would not know who. And we don't  
15 have the clocks any more either, so --

16 Q. Okay. Well, do you know who actually  
17 installed the clocks in the stores in Illinois, for  
18 example?

19 A. We would have had our maintenance techs  
20 install them.

21 Q. Okay. And those would be Speedway  
22 employees?

23 A. That is correct, Speedway employees.

24 Q. And do they work in a particular group  
25 at Speedway?

1           Q.   If we wanted to find out, what would we  
2   do?

3           A.   You mentioned those records for the  
4   repair shop.   That would be probably our only place  
5   to look.

6           Q.   Those 150 or so Kronos clocks, did they  
7   use the same TimeLink software or did they use  
8   other software?

9           A.   They would have, they would have used  
10   the TimeLink software.

11          Q.   Okay.   And like the TimeLink clocks,  
12   would employees have to enroll in those clocks  
13   before they could use them?

14          A.   I don't recall.   It seems to me they  
15   worked a little differently but I don't recall  
16   specifically.

17          Q.   Okay.   Do you know if they had to  
18   enroll in those clocks?

19          A.   There would have been some kind of  
20   enrollment feature.   That is a fair statement,  
21   correct.

22          Q.   Okay.   And do those Kronos clocks also  
23   utilize a finger scan feature?

24          A.   Yes.   We stuck with the finger scan  
25   technology.



1 employee, that would help identify each employee?

2 A. Yeah. I guess you could say that where  
3 if you had a card or something like that, then that  
4 could be borrowed, right?

5 Q. Right. Okay. So going back to the  
6 Kronos clocks are those still being used, by the  
7 way?

8 A. No. They would have been pulled out  
9 when the TimeLink clocks were pulled out.

10 Q. Okay. Sometime in 2018?

11 A. Yes. When we put the Infor clocks in,  
12 yep.

13 Q. When the Kronos clocks were rolled out  
14 and when Speedway employees were enrolled did  
15 Speedway require written consent before they were  
16 enrolled?

17 A. We did not require written consent, no.

18 Q. Okay. The third type of clock is the  
19 Infor time clock; is that correct?

20 A. That's the one we have now, correct.

21 Q. Okay. And do you know who the  
22 manufacturer of that clock is?

23 A. I do not.

24 Q. Do you know what the name of it is?

25 A. I do not. I couldn't tell you if we

1 had the Infor logo on that one or not.

2 Q. Does it also utilize finger scan  
3 technology?

4 A. Yes, it does.

5 Q. Okay. And have they, are those clocks  
6 being used in Illinois stores?

7 A. They should be, yes. That is correct.

8 Q. And do employees have to enroll in  
9 those clocks to be able to use them?

10 A. There is an enrollment feature, yes.

11 Q. And do you know how that process works?

12 A. I do not on the new ones, no.

13 Q. Do you know if employees have to  
14 provide a scan of their finger to become enrolled?

15 A. Yes. They would have to do that.

16 Q. Okay. Has Speedway obtained written  
17 consent from its employees before they were  
18 enrolled in the Infor time clocks?

19 A. Yes. They provide written consent  
20 today.

21 Q. Okay. When did Speedway first require  
22 written consent to use its time clocks?

23 A. It's been a year or two, somewhere in  
24 the mix there.

25 Q. Okay. Were you involved in that

1 Let's say five minutes.

2 MR. STEPHAN: Yeah. That sounds  
3 good.

4 MR. WOLFE: All right.

5 (WHEREUPON, a recess was taken.)

6 BY MR. STEPHAN:

7 Q. Matt, can you think of any reason why  
8 Speedway did not require written consent for its  
9 Illinois employees before they were enrolled in the  
10 time clocks before doing so in 2018?

11 A. Yeah. I don't know.

12 Q. Okay.

13 (WHEREUPON, Plaintiff's Exhibit  
14 No. 1 was marked for identification.)

15 BY MR. STEPHAN:

16 Q. Matt, have you seen this document  
17 before?

18 A. Intracompany Correspondence, not  
19 recalling it, no.

20 Q. Okay. Do you know any of the people  
21 that are listed under the to heading?

22 A. Under the to, yes.

23 Q. Who do you know?

24 A. Don Wehrly, D.W. Wehrly.

25 Q. Okay.

1           A. Phil came to Speedway in 2015.

2           Q. Okay. And he forwarded that article to  
3 you as well as Diana Anderson, Robin Opp, and Jerry  
4 Wagner on August 2nd, 2017 at 10:35 a.m.; do you  
5 see that?

6           A. I do see that.

7           Q. By the way, if you look at the article  
8 by Kroger, do you see in the third full paragraph  
9 on page, the second page where the article is, it  
10 references the Illinois Biometric Information  
11 Privacy Act?

12          A. I've lost you here. So on 7440?

13          Q. That's right.

14          A. And where?

15          Q. The first full paragraph at the top.  
16 Maybe it's the second.

17          A. It looks like the second. I see it,  
18 it's in the second.

19          Q. Had you heard of the Illinois Biometric  
20 Information Privacy Act before this e-mail?

21          A. No, I had not.

22          Q. Okay. By the way on that e-mail from  
23 Phil Hall to you and the others I mentioned, that  
24 includes Robin Opp, who is that?

25          A. Robin Opp, his current position is

1 A. I don't recall seeing this, no.

2 Q. Did you play any role in preparing any  
3 sort of consent?

4 A. No. No.

5 Q. By looking at this document can you  
6 tell who would have been involved in this process?

7 A. By looking at the document, no, I  
8 can't.

9 Q. Okay. Do you know if these consent  
10 forms were rolled out to Illinois stores around  
11 November of 2017?

12 A. Yeah. It references a November 2nd and  
13 November 1st, 2017 date on here.

14 Q. Right. And my question was do you know  
15 if that actually happened?

16 A. Oh, I don't know specifically.

17 Q. If you wanted to find out, who would  
18 you ask?

19 A. If this actually went out on what date,  
20 is that your question?

21 Q. That's right.

22 A. I would go to our communications group  
23 and see if they had a record of it.

24 Q. Can you remind me again who that would  
25 be?

1 Q. Is there a group at Speedway that's  
2 responsible for compliance with different laws?

3 A. Yes. That would be our legal group.

4 Q. Okay. And that is currently headed by  
5 Mr. Baugh; is that correct?

6 A. That is correct.

7 Q. And they are located in Enon, Ohio?

8 A. That is correct.

9 Q. I'm going to ask you some questions  
10 about the Illinois Speedway store employees. Some  
11 of this we may have gone over so if we did I  
12 apologize.

13 A. Okay.

14 Q. Were all of the Illinois store  
15 employees, let's use the date to September 12th and  
16 November of 2017, would you agree that they are all  
17 enrolled in Speedway time clocks?

18 A. They should have been, yes.

19 Q. And to become enrolled they would have  
20 to provide a scan of their fingerprint; is that  
21 correct?

22 A. They would have to, what we talked  
23 about earlier so they would have to scan their  
24 finger three times.

25 Q. Okay. And that would have been true

1 regardless of whether it was a TimeLink clock, a  
2 Kronos, or an Infor clock, correct?

3 A. So that's true of the TimeLink clock  
4 and I think I stated earlier I'm not 100 percent  
5 sure on the Kronos or the Infor.

6 Q. Okay. But you would agree that they  
7 generally went through the same enrollment process?

8 A. I would say it was a similar enrollment  
9 process without knowing specifically how that  
10 process worked, yes.

11 Q. Okay. Would you agree that they are  
12 subject to the same policies regarding those time  
13 clocks?

14 A. Policies, what do you mean by that?

15 Q. Any policies, time and attendance  
16 policies --

17 A. Like clocking in, clocking out, breaks,  
18 all that good stuff?

19 Q. That's right.

20 A. Yes. Yes, I would agree with that.

21 Q. And you disagree that prior to November  
22 of 2017 Speedway did not obtain written consents  
23 from them before they were enrolled?

24 A. I do not believe they obtained written  
25 or provided written consent; that is correct.

1 Q. Okay. And you'd also agree that prior  
2 to that date November of 2017 they weren't informed  
3 of a publicly available BIPA policy?

4 A. I don't know that specifically.

5 Q. Okay. Are you aware of a publicly  
6 available BIPA policy existing before November of  
7 2017?

8 A. No, I do not believe so.

9 MR. STEPHAN: That's all the  
10 questions I have. Thank you.

11 THE WITNESS: Okay. Thanks.

12 MR. STEPHAN: I appreciate it.  
13 Yep.

14 THE WITNESS: All right.

15 MR. WOLFE: We don't have  
16 anything. See you, Ryan.

17 MR. STEPHAN: Thanks, Matt.

18 (WHEREUPON, deposition concluded  
19 at 1:52 p.m.)

20 \* \* \* \* \*

21  
22  
23 \_\_\_\_\_  
MATT GREEN  
24  
25